

Introduced by Senator Morrow

January 9, 2003

An act to add Section 1376 to the Penal Code, relating to the death penalty.

LEGISLATIVE COUNSEL'S DIGEST

SB 51, as introduced, Morrow. Death penalty: mental retardation.

Existing law, added by an initiative statute, provides that the penalty for a defendant who is found guilty of murder in the first degree, where special circumstances exist, is death or imprisonment in the state prison for life. In determining the penalty to be imposed, the trier of fact shall take into account whether, as a result of mental defect, the defendant had the capability to appreciate the criminality of his or her conduct or to conform that conduct to the requirements of the law, if this is relevant. A recent decision of the United States Supreme Court has held that the imposition of the death penalty on a mentally retarded person is prohibited by the Constitution.

This bill would define the term “mentally retarded” and would require a defendant who believes that he or she is mentally retarded, in any case in which the prosecution has provided notice of an intent to seek the death penalty, to apply for a special finding of mental retardation at least 45 days prior to the commencement of trial. The bill would require that the application for a special finding present substantial evidence that good reason exists to believe that the defendant is mentally retarded. It would provide that, if the defendant meets this initial evidentiary burden, the court must appoint 3 psychologists, as specified, to examine the defendant, and would set forth standards with respect to the administration of IQ tests, the



information to be included in reports, and the furnishing of materials to the other party.

The bill would further provide that if a defendant who has properly applied for a special finding of mental retardation is convicted of first degree murder with special circumstances, as specified, in the guilt portion of the trial, and, if applicable, is found sane following an insanity plea, then a separate hearing must be conducted in which the trier of fact must make a special finding on the question of whether the defendant is mentally retarded. The bill would require the defendant to prove by a preponderance of the evidence that he or she is mentally retarded. If the trier of fact finds that the defendant is mentally retarded, the defendant must be sentenced to life imprisonment without the possibility of parole.

The bill would provide that if the trier of fact finds that the defendant is not mentally retarded, the trial must proceed to the separate hearing on the question of penalty. It would allow the trier of fact to consider evidence on the question of mental retardation introduced in earlier proceedings in evaluating specified aggravating and mitigating factors. The bill would allow the separate hearing on mental retardation to take place before the proceedings on the defendant's guilt or innocence upon agreement of the parties.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1376 is added to the Penal Code, to read:
2 1376. (a) As used in this section, "mentally retarded" means
3 the condition of significantly subaverage general intellectual
4 functioning existing concurrently with deficits in adaptive
5 behavior and manifested prior to 18 years of age. An intelligence
6 quotient of above 70 establishes a rebuttable presumption that the
7 defendant is not "mentally retarded." "Significant deficits in
8 adaptive behavior" may include substantial impairments in the



1 areas of communication skills, self-care, home living, social skills,
2 use of community resources, personal hygiene and safety,
3 academics, or work.

4 (b) (1) In any case in which the prosecution has provided
5 notice of an intent to seek the death penalty, a defendant who
6 believes he or she is mentally retarded as defined in subdivision (a)
7 shall, at least 45 days prior to the commencement of trial, apply for
8 a special finding that he or she is mentally retarded.

9 (2) The defendant's application for a specific finding shall
10 present substantial evidence that good reason exists to believe the
11 defendant is mentally retarded as defined in subdivision (a). If the
12 court finds that the defendant has not presented substantial
13 evidence that good reason exists to believe he or she is mentally
14 retarded, the application for a special finding that the defendant is
15 mentally retarded shall be denied. If the court finds that the
16 application does present substantial evidence that good reason
17 exists to believe the defendant is mentally retarded, the court shall
18 appoint a board certified forensic psychologist to examine the
19 defendant. The court shall also appoint one psychologist to be
20 named by the defense and one psychologist to be named by
21 prosecution to examine the defendant. Any determination of the
22 defendant's intelligence quotient shall be made by an individually
23 administered, scientifically recognized standardized intelligence
24 quotient test administered by the examiner. All reports of the
25 results of the examinations shall include, but not be limited to, a
26 description of the examiners' opinions, the bases and reasons for
27 those opinions, the examiners' qualifications, and a list of all
28 materials considered or relied upon by the examiner. All materials
29 considered or relied upon by the examiner shall be provided to
30 both parties. The prosecution and defense may each furnish to the
31 experts whatever materials it believes are relevant, and each shall
32 furnish to the opposing party a copy of the materials it furnishes
33 to the experts. Discovery shall otherwise be conducted pursuant to
34 Section 1054 to Section 1054.8, inclusive, of the Penal Code.

35 (3) If a defendant who has properly applied for a special finding
36 that he or she is mentally retarded pursuant to subdivision (b) has
37 been found guilty of first degree murder and, if applicable, has
38 been found sane after entering a plea of not guilty by reason of
39 insanity under Section 1026, and if one or more special
40 circumstances as enumerated in Section 190.2 have been charged

1 and found to be true, a separate hearing shall be conducted in
2 which the jury or the court, if a jury has been waived by the
3 defendant and the prosecution, shall make a special finding on the
4 question of whether the defendant is mentally retarded. Any jury
5 verdict shall be unanimous.

6 (c) In the separate hearing for a defendant who has applied for
7 a special finding that he or she is mentally retarded pursuant to
8 subdivision (b), the defendant and the prosecution may present
9 evidence on the question of whether the defendant is mentally
10 retarded. The defendant shall have the burden of proving by a
11 preponderance of the evidence that the defendant is mentally
12 retarded. After the conclusion of the defendant's presentation of
13 evidence, the prosecution shall present its evidence regarding the
14 issue of whether the defendant is mentally retarded. Each party
15 may offer rebuttal evidence, unless the court, for good reason in
16 furtherance of justice, also permits other evidence in support of the
17 original contention. When the presentation of evidence is
18 concluded, the prosecution shall make its final argument and the
19 defendant shall conclude with his or her final argument. If the
20 hearing is held before a jury, the court shall instruct the jury on all
21 matters of law necessary for the rendering of a finding. The jury
22 shall not be informed that the court found that the defendant
23 presented substantial evidence that good reason exists to believe
24 the defendant is mentally retarded. If the jury or the court, as
25 applicable, finds that the defendant is mentally retarded, the
26 defendant shall be sentenced to life imprisonment without the
27 possibility of parole.

28 (d) If the jury, or the court if a jury is waived by the parties,
29 finds that the defendant is not mentally retarded, the criminal trial
30 shall proceed to the separate hearing on the question of penalty
31 pursuant to Sections 190.1, 190.3, and 190.4. A verdict that the
32 defendant is not mentally retarded under this section shall not
33 restrict the defendant's opportunity to introduce evidence of
34 mental retardation during the criminal trial or to argue that the
35 evidence should be considered as a mitigating factor under Section
36 190.3. The trier of fact may consider evidence on the question of
37 mental retardation introduced in earlier proceedings in evaluating
38 the factors listed in subdivisions (c) to (k), inclusive, of Section
39 190.3, even if the trier of fact did not find that the defendant is
40 mentally retarded as defined in subdivision (a).



1 (e) Upon agreement of the parties, the separate hearing on the
2 issue of mental retardation may occur prior to the proceedings on
3 the defendant's guilt or innocence of first degree murder.

4 (f) The procedures set forth in subdivisions (b) to (e), inclusive,
5 apply to all proceedings commenced on or after the effective date
6 of this section.

7 SEC. 2. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

